

## NEW ZEALAND

### TRADE SUMMARY

The U.S. ran a \$185 million merchandise trade surplus with New Zealand in 1999, compared with a surplus of \$240 million in 1998. U.S. exports to New Zealand were \$1.934 billion in 1999, an increase of \$49 million from 1998. U.S. imports from New Zealand in 1999 totaled \$1.749 billion, up from \$1.645 billion in 1998. The stock of U.S. foreign direct investment in New Zealand amounted to \$6.9 billion in 1998, down 5.9 percent from 1997. U.S. investors accounted for the largest share (35 percent by value) of new investment approvals in 1998. U.S. direct investment in New Zealand is largely concentrated in forestry, telecommunications, transportation, food processing and electronic data processing.

### OVERVIEW

New Zealand is a valued partner in the global effort to reduce barriers to the free flow of trade and investment, working closely with the United States in the World Trade Organization (WTO), Asia Pacific Economic Cooperation (APEC) and other multilateral fora. New Zealand's reform process has been largely unilateral, and it maintains a generally open trade and investment regime. Roughly 93 percent of the value of imports enter duty free; most other imports face duties in the area of five to seven percent.

With the government's deregulation and privatization program in the late 1980s, New Zealand became a growing destination for U.S. foreign direct investment. The New Zealand-U.S. commercial relationship has also expanded rapidly. Trade relations in 1999 were marked by close coordination for the New Zealand-hosted APEC summit in September and the U.S.-hosted WTO ministerial in December. The new labor-alliance coalition government elected in November 1999 and led by Prime Minister Helen Clark is expected to maintain New Zealand's generally liberal trade orientation. It

has given indications, however, that it will proceed more cautiously than its predecessor in some areas (such as unilateral tariff reductions) and more aggressively in others (such as industry and export assistance).

### STANDARDS, TESTING, LABELING AND CERTIFICATION

#### Regulations Regarding Agri-biotech Products

The Environmental Risk Management Authority (ERMA) has assumed responsibility for assessments of new organisms introduced into New Zealand. Review of products produced using modern biotechnology, referred to as "genetically modified organisms" (GMO) in New Zealand, is now compulsory and first applications under the full process of public notification and hearing have occurred. ERMA has approved field tests with strict controls for various products (including crops and livestock) but full commercial release of a GMO has yet to take place in New Zealand. An Independent Biotechnology Advisory Committee (IBAC) is preparing a study evaluating the economic impact of a first commercial release of a GMO.

Applications for GMO field trials have often evoked a large number of comments from both opposing and supporting groups. The new labor-alliance government will establish a royal commission to review genetic modification during 2000.

In addition, a new mandatory standard for foods produced using modern biotechnology came into effect in mid-1999. The standard prohibits the sale of food produced using gene technology, unless the food has been assessed by the Australia-New Zealand Food Authority (ANZFA) and listed in the standard. Various foods produced using modern gene technology are currently allowed to be sold under a temporary exemption (based on approval from foreign health agencies like the FDA and application for ANZFA review). ANZFA released for public comment by mid-January

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2000, 13 applications (including some from U.S.-owned companies) requesting approval of the sale of foods produced from gene technology, including from varieties of BT corn.

In October 1999, the Australia-New Zealand Food Standards Council (ANZFSC) reaffirmed its commitment to mandatory labeling for all genetically modified foods (GMFs) based on five proposed label categories. ANZFSC affirmed that no safety issues relative to GMFs had been found but stated that it was responding to consumers' choice to be better informed. ANZFSC did, however, postpone the labeling decision that was expected in October 1999 until early in 2000 so it could review a further cost study, WTO implications, and domestic and international comments (including U.S. Government comments). ANZFSC is now expected to meet in May 2000 to further consider the labeling standard. Any labeling decision is expected to provide a 12-month lead-time before it goes into effect.

The United States Government is monitoring these programs to determine whether they conform to New Zealand's international obligations. To date, U.S. agricultural exports have not yet been affected by these programs or proposed programs. We continue to consult, send demarches and work through these issues before they become a source of trade friction.

### **Sanitary and Phytosanitary Controls**

New Zealand maintains a strict regime of sanitary and phytosanitary control for virtually all imports of agricultural products. Opportunities for greater access to the New Zealand market remain limited for some U.S. agricultural products, while other products are subject to rigid pre-clearance and testing requirements. However, there has been improvement over the past few years in access for some U.S. agricultural products. Pears from several U.S. states were allowed access into

New Zealand in November 1999, and the first imports of U.S. pears have been made.

### **Poultry**

New Zealand maintains a complete prohibition on all imports of uncooked poultry. In September 1999, the Ministry of Agriculture and Forestry (MAF) released a review of submissions for the chicken meat and meat products import risk analysis (including comments from the United States). The review raised continued MAF concerns over three risk areas of infectious bursal disease, Newcastle disease and salmonella. MAF (along with the Ministry of Health for salmonella) also agreed to undertake further risk studies in these areas. The results of the further studies may also affect imports of cooked poultry meat, which currently are being made in small quantities from the U.S.

### **Salmon**

Uncooked, headless, gilled and gutted salmon are now permitted to enter New Zealand from the United States, Australia, Canada, the European Union, and Norway pursuant to an August 1998 decision by the government of New Zealand and regulations finalized in January 1999. This is an issue that the United States Government was able to resolve bilaterally with New Zealand. U.S. industry is pursuing sales in the market.

## **INTELLECTUAL PROPERTY RIGHTS PROTECTION**

### **Parallel Imports/IPR Laws**

On May 16, 1998, the New Zealand government passed an amendment to the Copyright Act legalizing parallel importing of all copyrighted works. This action raised concerns among U.S. software, film, video, music and other copyright industries that allowing parallel imports would make it more difficult to detect and combat piracy. Concerns have also been expressed that

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New Zealand's current laws do not effectively deter copyright and trademark piracy.

Because of the concerns outlined above, the U.S. trade representative initiated an out-of-cycle Special 301 review of New Zealand's intellectual property regime in 1998 and placed New Zealand on the Special 301 Watch List in April 1999.

A study commissioned by the New Zealand Department of Commerce and released in 1999 recommended a number of measures to strengthen New Zealand's IPR regime. The government agreed in August 1999 to adopt several of these recommendations, including making trademark violations a criminal offense, increasing the maximum penalty for copyright and trademark violations from three months to five years, allowing forfeiture of goods and extending custom's power to detain goods. Legislation to implement these measures remains before the parliament. In addition, the new Clark government has pledged to ban parallel imports of CDs, videos, films and software for up to two years after first release. The United States is encouraging New Zealand to make the ban permanent.

### SERVICES BARRIERS

#### Local Content Quotas

The new labor-alliance government has pledged to introduce format-specific quotas for local content on radio and broadcast television. No specific proposals had been put forward at the time of this report. Such an action could violate New Zealand's commitments under the WTO General Agreement on Trade in Services (GATS).

### ANTI-COMPETITIVE PRACTICES

#### Telecommunications

While prospective entrants into New Zealand's deregulated telecommunications market face no legal restrictions, there has been a history of complaints regarding the actions of the former monopoly provider Telecom New Zealand. Telecommunications firms have been required to deal directly with Telecom New Zealand for local access or telephone numbers. In such cases, Telecom has forced potential competitors to reveal marketing plans and customer information before allocating requested lines. In addition, U.S. telecommunications companies have charged that Telecom New Zealand has engaged in predatory pricing in those localities served by competing telephone and cable providers. In 1999, Telecom New Zealand was criticized for its decision to charge for local calls to internet services unless the calls were routed through specified Telecom-allocated toll-free numbers. Appeals to the courts or to the Commerce Commission have been potential entrants' only recourse from such tactics. As part of the WTO Basic Telecommunications Agreement, the Government of New Zealand took certain pro-competitive regulatory commitments which, among other things, obligate the government to maintain measures to prevent major suppliers from engaging in anti-competitive practices.

#### State Trading Enterprises (STEs)

New Zealand maintains several agricultural producer organizations which enjoy statutory protection as monopoly sellers or which license sellers. Export monopolies remain in place for most boards but the boards are being reformed to become more commercial per the national government's initiative in 1998. In September 1999, the government approved dairy restructuring legislation, which, if certain conditions are met, would end the statutory export monopoly of the New Zealand Dairy

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Board (an STE) on September 1, 2000. The restructuring must first clear the hurdles of creating a mega coop and obtaining the approval of the Commerce Commission and 75 percent of dairy farmers. Kiwifruit New Zealand will be commercialized into Zespri Group Ltd. (and Zespri International Ltd.) on April 1, 2000, but will retain its export monopoly (except to Australia). Under the Apple and Pear Industry Restructuring Act approved in 1999, the Apple and Pear Marketing Board will become a company, Enza Ltd., on April 1, 2000, with responsibility to acquire and market New Zealand apples internationally. Although Enza Ltd. is expected to export most apples, an export permits committee has been created to approve export applications. Applications from independent exporters must complement the current marketing activities of Enza and not undermine its reputation; the permits committee made approvals for independent exports in December 1999.

### OTHER BARRIERS

#### Pharmaceutical Management Agency (PHARMAC)

PHARMAC was established in 1993 as a limited liability company to manage the purchasing of pharmaceuticals for the health funding authority (HFA). The HFA is responsible for purchasing health services and supplies for all New Zealanders. PHARMAC administers the National Pharmaceutical Schedule on HFA's behalf. The PHARMAC schedule lists medicines subsidized by the government and the reimbursement paid for each pharmaceutical. The schedule also specifies conditions for prescription of a product listed for reimbursement. At its creation, PHARMAC was exempted from New Zealand's competition laws, an exemption upheld in a 1997 high court ruling in a court case brought against PHARMAC by New Zealand's Researched Medicines Industry (RMI) Association. While New Zealand does not *per se* restrict the sale of

non-subsidized pharmaceuticals in New Zealand, private medical insurance companies will not cover unsubsidized medicines. Thus, PHARMAC effectively controls what prescription medicines will be sold in New Zealand and, to a large extent, at what price they will be sold.

Pharmaceutical suppliers complain that it is difficult to list new chemical entities and line extensions on Pharmac's schedule and that the methodology used to determine the government reimbursement levels lacks transparency and predictability. In general, PHARMAC will not apply a subsidy to a new medicine unless it is offered at a price lower than currently available subsidized medicines in the same therapeutic class, or unless the producer is willing to lower its price on another medicine already subsidized in another class. Pharmaceuticals can also be de-listed if a competing product is selected to serve the market as the result of a tender or if a cheaper alternative becomes available and the manufacturer of the original product refuses to discount its price to that of the lower-priced alternative. Pharmaceutical suppliers have also objected to Pharmac's failure to differentiate between patented and generic medicines in setting a reference price, thus effectively eroding the value of the patented medicine's intellectual property.

Pharmac's policies have not only constrained market access for U.S. pharmaceutical companies, but they have also had the potential to affect the availability of drugs in New Zealand. A Danish pharmaceutical company announced in January 2000 that it would withdraw all its drug products from the New Zealand market and cease funding of local university activities because Pharmac's policies made it impossible to run a profitable business.

The U.S. and New Zealand held bilateral discussions in 1998 regarding industry concerns over Pharmac's policies and procedures and informal discussions continued in 1999. In

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March 1999, the researched medicines industry presented to the associate minister of health responsible for PHARMAC a set of procedural recommendations it believed would improve the relationship between PHARMAC and the Pharmaceutical suppliers and increase the transparency of Pharmac's actions. The pharmaceuticals industry has reported little progress in addressing its procedural recommendations and continues to be concerned that the substantive issues regarding barriers to market access and erosion of intellectual property value remain outstanding. We have made our views known to the new government and will continue our efforts to make progress on this issue.

On a related issue, the pharmaceutical industry welcomed the New Zealand Court of Appeals' December 1999 ruling that upheld the Commissioner of Patents' decision to allow Swiss-type patents (that is, patents for new uses of old drugs). PHARMAC had challenged the decision.